

116TH CONGRESS
1ST SESSION

S. 2279

To make necessary reforms to improve compliance with loss mitigation requirements by servicers of mortgages for single family housing insured by the FHA, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 25, 2019

Ms. CORTEZ MASTO (for herself and Mr. VAN HOLLEN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To make necessary reforms to improve compliance with loss mitigation requirements by servicers of mortgages for single family housing insured by the FHA, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “FHA Foreclosure Pre-
5 vention Act of 2019”.

1 **SEC. 2. DOCUMENTATION OF LOSS MITIGATION EFFORTS.**

2 Section 204(a) of the National Housing Act (12
3 U.S.C. 1710(a)) is amended by adding at the end the fol-
4 lowing:

5 “(10) DOCUMENTATION OF LOSS MITIGATION
6 EFFORTS.—

7 “(A) IN GENERAL.—Notwithstanding any
8 other provision of this title, the Secretary may
9 not pay insurance benefits to any mortgagee of
10 a single family mortgage insured under this Act
11 unless the mortgagee or other servicer for the
12 mortgage has provided documentation to the
13 Secretary that is sufficient to demonstrate com-
14 pliance with any requirements of the Secretary
15 applicable to the mortgage relating to loss miti-
16 gation.

17 “(B) RULE OF CONSTRUCTION.—Nothing
18 in this paragraph may be construed to limit the
19 authority of the Secretary to impose civil mone-
20 tary penalties.”.

21 **SEC. 3. HUD OVERSIGHT OF SERVICERS.**

22 Section 533 of the National Housing Act (12 U.S.C.
23 1735f–11) is amended by adding at the end the following:

24 “(d) OVERSIGHT OF MORTGAGE SERVICERS.—

25 “(1) OVERSIGHT.—

1 “(A) IN GENERAL.—The Secretary shall
2 conduct oversight of servicers of single family
3 mortgages insured under this Act on a regular
4 and ongoing basis and in a manner designed
5 to—

6 “(i) ensure that the servicers comply
7 with the requirements of this Act and the
8 standards and guidelines established by the
9 Secretary for the servicing of those mort-
10 gages; and

11 “(ii) identify systemic problems and
12 trends with the compliance described in
13 clause (i).

14 “(B) LOSS MITIGATION REQUIREMENTS.—
15 The oversight conducted under subparagraph
16 (A) shall include—

17 “(i) oversight designed to ensure that
18 the servicers comply with the requirements
19 under this Act, and the standards and
20 guidelines established by the Secretary, for
21 loss mitigation; and

22 “(ii) appropriate sampling and review
23 of the compliance described in clause (i),
24 including direct information collection
25 through generally accepted means from

1 borrowers whose files were sampled, such
 2 as surveys, focus groups, interview, or
 3 other similar measures.

4 “(2) CORRECTIVE ACTION.—The Secretary
 5 shall take such actions as may be necessary to rem-
 6 edy failures by servicers of single family mortgages
 7 insured under this Act to comply with the require-
 8 ments of this Act and the standards and guidelines
 9 established by the Secretary for the servicing of
 10 those mortgages, including ordering noncompliant
 11 servicers to take corrective actions, including barring
 12 foreclosure and cancelling from the borrower’s ac-
 13 count balance and from any insurance claim any in-
 14 terest and other fees that accrued during periods of
 15 noncompliance.”.

16 **SEC. 4. COMPLAINT PROCEDURE REGARDING LOSS MITI-**
 17 **GATION.**

18 Title V of the National Housing Act (12 U.S.C.
 19 1731a et seq.) is amended by adding at the end the fol-
 20 lowing:

21 **“SEC. 543. COMPLAINT PROCEDURE REGARDING LOSS**
 22 **MITIGATION.**

23 “(a) COMPLAINT PROCEDURE FOR BORROWERS.—

24 “(1) FEATURES.—The Secretary shall establish
 25 and maintain a procedure for mortgagors under sin-

1 gle family mortgages insured under this Act to reg-
2 ister complaints with the Secretary regarding serv-
3 icing, including loss mitigation actions, which
4 shall—

5 “(A) include making available to the public
6 a website of the Department of Housing and
7 Urban Development, an e-mail address, a phone
8 number, and a mailing address for registering
9 complaints; and

10 “(B) provide an opportunity for servicers
11 to respond to complaints and submit informa-
12 tion regarding complaints.

13 “(2) ATTEMPT TO RESOLVE.—For each com-
14 plaint registered under the procedure established
15 under this subsection, the Secretary shall—

16 “(A) review the complaint and any re-
17 sponse by the servicer; and

18 “(B) seek to resolve any dispute between
19 the mortgagor and the servicer and make a de-
20 termination regarding the complaint.

21 “(3) USE OF INFORMATION.—In making any
22 determination regarding the compliance of a servicer
23 with the requirements, standards, and guidelines for
24 servicing, including in identifying systemic problems
25 and trends with servicing, the Secretary shall take

1 into consideration information obtained under the
 2 procedure established under this subsection.

3 “(b) NOTIFICATION OF OPPORTUNITY TO APPEAL.—

4 Upon making a determination with respect to a complaint
 5 regarding servicing, the Secretary shall notify the com-
 6 plainant of—

7 “(1) the determination;

8 “(2) the opportunity for the complainant to ap-
 9 peal an adverse determination under the procedure
 10 established under subsection (a); and

11 “(3) the requirements for and how to initiate
 12 an appeal described in paragraph (2).

13 “(c) APPEALS PROCEDURE.—

14 “(1) ESTABLISHMENT.—The Secretary—

15 “(A) shall provide a procedure for mortga-
 16 gors to appeal an adverse determination by the
 17 Secretary regarding a complaint registered
 18 under the procedure established under sub-
 19 section (a); and

20 “(B) if appropriate, may take action pur-
 21 suant to section 533(d)(2) with respect to a de-
 22 cision on an appeal described in subparagraph
 23 (A).

24 “(2) LIMITATION.—The procedure established
 25 under this subsection may not provide an appeal for

1 any complaint that was previously appealed under
2 the procedure.

3 “(d) PROHIBITION ON FORECLOSURE.—The Sec-
4 retary shall prohibit the foreclosure of a mortgage during
5 any period that a complaint or appeal regarding the mort-
6 gage is pending under the procedures established under
7 this section and during a reasonable period after a com-
8 plainant is notified of a determination regarding a com-
9 plaint that provides the complainant an opportunity to ap-
10 peal the decision.

11 “(e) REPORTING.—The Secretary shall submit an an-
12 nual report to Congress regarding complaints received
13 under the procedure maintained under subsection (a),
14 which shall—

15 “(1) specify the number of complaints received,
16 disaggregated by types of complaints, status of com-
17 plaints, geographic distribution of complaints, and
18 average times for resolution of complaints;

19 “(2) include relevant information submitted by
20 servicers and any other information that the Sec-
21 retary considers relevant; and

22 “(3) comply with any applicable privacy protec-
23 tions.”.

1 **SEC. 5. NOTICE TO BORROWERS OF LOSS MITIGATION STA-**
 2 **TUS AND DECISIONS.**

3 Section 204(a) of the National Housing Act (12
 4 U.S.C. 1710(a)), as amended by section 2, is amended by
 5 adding at the end the following:

6 “(11) NOTICE TO BORROWERS OF LOSS MITIGA-
 7 TION STATUS AND DECISIONS.—

8 “(A) REQUIRED NOTICE.—The Secretary
 9 shall require that, before any acceleration of the
 10 indebtedness due under a mortgage, the servicer
 11 for the mortgage shall provide written notice to
 12 the mortgagor that includes—

13 “(i) a summary explaining how the
 14 servicer applied the loss mitigation option
 15 priority analysis established by the Sec-
 16 retary, including the loss mitigation review
 17 waterfall under section III.A.2.j.iii of the
 18 FHA Single Family Housing Policy Hand-
 19 book 4000.1, or any successor provision,
 20 and setting forth the actual information
 21 entered in applying the analysis;

22 “(ii) if the servicer did not conduct
 23 the analysis described in clause (i) because
 24 the servicer determined that the mortgagor
 25 did not express any interest in loss mitiga-
 26 tion or provide appropriate documents—

1 “(I) a statement of that deter-
2 mination;

3 “(II) a description of the actions
4 that the servicer took to solicit the
5 borrower for loss mitigation review
6 and obtain appropriate documents;
7 and

8 “(III) a statement of the dates
9 that the servicer took the actions de-
10 scribed in subclause (II);

11 “(iii) a statement setting forth the re-
12 sults of the monthly loss mitigation evalua-
13 tions of the servicer for the mortgage re-
14 quired under section 203.605(a) of title
15 24, Code of Federal Regulations, or any
16 successor regulation;

17 “(iv) with respect to any loss mitiga-
18 tion action for which the mortgagor was
19 determined to be ineligible, an explanation
20 of, and documentation showing, why the
21 mortgagor was determined to be ineligible;

22 “(v) a statement informing the bor-
23 rower that, upon the request of the bor-
24 rower, the Secretary shall provide the bor-
25 rower with all loss mitigation evaluation

1 documentation required by the Secretary
2 with respect to the mortgage, including the
3 monthly evaluations described in clause
4 (iii); and

5 “(vi) information describing the proce-
6 dure under section 543(a) for registering
7 complaints regarding loss mitigation and
8 the procedure under section 543(c) for ap-
9 pealing the decision of a servicer regarding
10 loss mitigation actions.

11 “(B) REFERENCES.—The notice required
12 under subparagraph (A) shall—

13 “(i) contain references to the applica-
14 ble provisions of the applicable handbook
15 of the Department of Housing and Urban
16 Development regarding ongoing loss miti-
17 gation reviews and the standards for those
18 reviews; and

19 “(ii) identify how the provisions de-
20 scribed in clause (i) may be accessed on a
21 publicly accessible website of the Depart-
22 ment of Housing and Urban Develop-
23 ment.”.

1 **SEC. 6. RULE OF CONSTRUCTION.**

2 Nothing in this Act may be construed to supercede,
3 or exempt any person from complying with, any provision
4 of the Real Estate Settlement Procedures Act of 1974 (12
5 U.S.C. 2601 et seq.) or any regulations issued under that
6 Act.

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